

Proceeding: UNIVERSAL SERVICE Record 1 of 1
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Submission Type: CO Submission Status: ACCEPTED Viewing Status: UNRESTRICTED
Subject:
DA Number: Exparte Late Filed: File Number:
Calendar Date Filed: 06/18/1998 3:34:42 PM Date Disseminated:
Official Date Filed: 06/18/1998 Filed From: INTERNET
Confirmation # 1998618900740

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**COMMENT IN SUPPORT BY THE NEW YORK STATE
OFFICE OF GENERAL SERVICES INFORMATION TECHNOLOGY & PROCUREMENT**

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Florida Department of Management)
Services Motion for Declaratory)
Ruling or, in the Alternative,) Docket No. DA98-977
Petition for Waiver of Existing)
Contracts Rule (Pleading Cycle)
Established in CC Docket No. 96-45))

**COMMENT IN SUPPORT BY THE NEW YORK STATE
OFFICE OF GENERAL SERVICES INFORMATION TECHNOLOGY & PROCUREMENT**

A. Introductory Statement.

The New York State Office of General Services Information Technology and Procurement Program hereby expresses its support for the motion for declaratory ruling filed by the State of Florida Department of Management Services ("the Florida DMS") in the above-captioned docket.

This office has reviewed the Florida DMS motion and fully supports its request that renewal options which are part of competitively bid master contracts should not be included in the term "voluntary extensions", 47 C.F.R. § 54.511(d). The following persons can address any questions concerning this comment:

Michael McCormack
Deputy Commissioner
Information Technology & Procurement Services
NYS Office of General Services
ESP Corning Tower, 41st Floor
Albany, NY 12242

Paula Moskowitz
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This comment is being submitted electronically by Internet.

B. Many of New York State's Master Contracts Are Similar To Florida's, and They Have Similar Competitively Bid Renewal Options.

The Information Technology and Procurement Program provides telecommunications and information technology competitively bid master contracts to schools and libraries for their voluntary use. These contracts are then used to gain the benefits of aggregation. Many of our non-State agency customers are schools and libraries of such small size and limited resources that this is the only practical solution for them to obtain telecommunications and related technology services -- using the leverage and economies of scale that only a state can furnish through a master contract program.

In addition, we operate our master telecommunications program similar to that of Florida, using contracts which are competitively bid in accordance with standards designed to promote competition. New York, along with other states has recognized the benefits of competitive bid procedures in obtaining the most economic contracts for their citizens.

C. Information Technology & Procurement Believes State Renewal Options Incorporated in Competitively Bid Master Contracts Should Not be "Voluntary Extensions".

New York State schools and libraries have applied for Universal Service Funds in support of telecommunications services pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 254.

In general, FCC regulations applicable to Universal Service Funds require the competitive bidding of telecommunications service contracts in order for them to be eligible for Universal Service Fund assistance. 47 C.F.R. § 54.504(a). As to this, we have no quarrel.

Under paragraph (c) of section 54.511, the FCC has provided

a limited exemption from competitive bidding for "existing contracts", as therein defined. This regulation grandfathers current contracts. According to paragraph (d) of that section, however, "the exemption . . . shall not apply to voluntary extensions of existing contracts." Section 54.511(d) was adopted by the Commission in Order No. FCC 97-420, issued in CC Docket No. 96-45 on December 30, 1997. See also 63 Fed. Reg. 2094 (Jan. 13, 1998) (summary of the Fourth Order on Reconsideration and Report and Order, issued Dec. 30, 1997).

On February 24, 1998, the staff of the SLC issued a Fact Sheet on master contracts, which interpreted the term "voluntary extensions" as an amendment to a contract. Under its interpretation, an amendment would remove a contract from the "existing contracts" exemption and would require that the amended contract be competitively bid to be eligible for the Universal Service funds.

In informal discussions with the SLC staff, however, the Florida DMS learned that the staff interpreted renewal options in master contracts to fall into the category of "voluntary extensions". In its motion, the Florida DMS explores both case law precedent and various Federal and state statutory codes to demonstrate why this is an incorrect interpretation. The thrust of the argument is that renewal options incorporated in master contracts on inception through competitive bid procedures should not constitute a "voluntary extension". New York State does not here repeat the legal arguments and conclusions which Florida presented in its motion, but it is in full agreement with them.

As a policy matter, we believe the exercise of preexisting contract renewal option fully disclosed upon initial competitive

solicitation is the prerogative of a state as the judge of what is beneficial to its citizens. The SLC will profoundly derogate from this sound proposition by insisting that states rebid contracts having such renewal options as a condition to Universal Service Fund assistance.

Like the Florida DMS, we are unaware of any prior notice and comment procedures or contemporaneous explanation of the regulation at section 511(d) as of the time of its adoption. We understand that paragraph (d) is intended, and rightly so, to thwart attempts by state agencies to avoid competitive bidding by subsequent amendment of existing contracts to extend their otherwise expiring terms, but believe that renewal options, as described herein, do not blunt competition.

Given the SLC's informal view, Florida has taken the precaution of rebidding some of its renewal contracts, as described in its motion, adding needlessly to its procurement costs. Many other states, including New York, have telecommunication contracts which have been competitively bid under state standards but which will not be grandfathered if their renewal options are executed. We hope all these other similarly situated states will avoid this costly rebidding exercise.

Without an explicit ruling from the FCC to correct the SLC's informal interpretation, we believe that many states, including New York, will be faced with Florida's dilemma: to require that small schools and libraries undertake multiple, costly, and probably uneconomical telecommunications procurements, or forgo substantial amounts of much needed financial assistance that national policy has provided.

D. Relief Requested.

Based on the foregoing, New York State Office of General Services Information Technology & Procurement respectfully requests that the FCC grant the Florida DMS' motion for a declaratory ruling that exercise of renewal provisions which are part of the original master contracts will not disqualify master contracts as "existing contracts". Such a ruling would make master contracts exempt from competitive bidding until the expiration of their renewal terms.

Respectfully submitted,

Paula Moskowitz
Director, Procurement Services Group

Dated: June 18, 1998